



## POLICE DEPARTMENT

-----X  
In the Matter of the Disciplinary Proceedings :

- against - :

FINAL

Police Officer Kevin Richmond :

ORDER

Tax Registry No. 946161 :

OF

Manhattan Court Section :

DISMISSAL  
-----X

Police Officer Kevin Richmond, Tax Registry No. 946161, having been served with written notice, has been tried on written Charges and Specifications numbered 2023-28864 as set forth on form P.D. 468-121, dated August 1, 2023 (amended on October 13, 2023), and after a review of the entire record, Respondent is found Guilty.

Now therefore, pursuant to the powers vested in me by Section 14-115 of the Administrative Code of the City of New York, I hereby DISMISS Police Officer Kevin Richmond from the Police Service of the City of New York.

EDWARD A. CABAN  
POLICE COMMISSIONER

EFFECTIVE: 11/13/23

COURTESY • PROFESSIONALISM • RESPECT

Website: <http://nyc.gov/nypd>



POLICE DEPARTMENT

November 6, 2023

-----X

In the Matter of the Charges and Specifications	:	Case No.
- against -	:	2023-28864
Police Officer Kevin Richmond	:	
Tax Registry No. 946161	:	
Manhattan Court Section	:	

-----X

At: Police Headquarters  
One Police Plaza  
New York, NY 10038

Before: Honorable Paul M. Gamble, Sr.  
Assistant Deputy Commissioner Trials

APPEARANCES:

For the Department: Javier Seymore, Esq.  
Department Advocate's Office  
One Police Plaza  
New York, NY 10038

For the Respondent: Stephen Worth, Esq.  
Worth, Longworth & London, LLP  
111 John Street, Suite 640  
New York, NY 10038

To:

HONORABLE EDWARD A. CABAN  
POLICE COMMISSIONER  
ONE POLICE PLAZA  
NEW YORK, NY 10038

COURTESY • PROFESSIONALISM • RESPECT

Website: <http://nyc.gov/nypd>

## CHARGES AND SPECIFICATIONS

1. Police Office Kevin Richmond, on or about July 27, 2023, while assigned to the Chief of Department – Domestic Violence Office, while off-duty, in Orange County, New York, engaged in conduct prejudicial to the good order, efficiency, or discipline of the Department, in that, said Police Officer refused to submit to a chemical breath test to determine his blood alcohol concentration.

A.G. 304-04 Page 1, Paragraph 1

PROHIBITED CONDUCT

N.Y.S. VTL § 1194(1)(b)

ARREST AND TESTING

2. Police Officer Kevin Richmond, on or about July 27, 2023, while assigned to the Chief of Department – Domestic Violence Office, while off-duty, in Orange County, New York, engaged in conduct prejudicial to the good order, efficiency, or discipline of the Department, in that, said Police Officer did wrongfully operate a motor vehicle while his ability to do so was impaired by an intoxicant with a BAC of .064%. *(As added)*.

A.G. 304-06, Page 1, Paragraph 1

PROHIBITED CONDUCT

N.Y.S. VTL § 1192(1)

OPERATING A MOTOR  
VEHICLE WHILE UNDER THE  
INFLUENCE OF ALCOHOL OR  
DRUGS

3. Police Officer Kevin Richmond, on or about July 27, 2023, while assigned to the Chief of Department – Domestic Violence Office, while off-duty, in Orange County, New York, engaged in conduct prejudicial to the good order, efficiency, or discipline of the Department, in that, said Police Officer did wrongfully cause the death of an individual known to the Department while he operated a motor vehicle while his ability to do so was impaired by an intoxicant with a BAC of .064%. *(As added)*.

A.G. 304-06, Page 1, Paragraph 1

PROHIBITED CONDUCT

4. Police Officer Kevin Richmond, on or about July 27, 2023, while assigned to the Chief of Department – Domestic Violence Office, while off-duty, in Orange County, New York, engaged in conduct prejudicial to the good order, efficiency, or discipline of the Department, in that, said Police Officer was unfit for duty. *(As added)*.

A.G. 304-06, Page 1, Paragraph 1

PROHIBITED CONDUCT

A.G. 304-06, Page 1, Paragraph 1

FITNESS FOR DUTY

## REPORT AND RECOMMENDATION

The above-named member of the Department appeared before me on November 1, 2023. Respondent, through his counsel, entered a plea of Not Guilty to the subject charges. The Department called New York State Police Investigator Thomas Garcia, Dr. Cherry Alice Tsai, Police Officer Anthony Polanco and Sergeant Michael Vega as witnesses. Respondent testified on his own behalf. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review. Having evaluated all of the evidence in this matter, the Tribunal finds Respondent Guilty of the charged misconduct and recommends that he be terminated.

## ANALYSIS

The following facts are not in dispute in this case.

Respondent admitted that on July 26, 2023, he attended a "Best of Westchester" festival in New Rochelle with friends. He further admitted that while at the festival, he consumed eight free samples of alcoholic beverages between 1830-2200 hours: four of bourbon, two of red wine and two of hard seltzer.

At about 0000 hours on July 27, 2023, Respondent had an automobile accident while driving north on Interstate 87. An individual known to the Department died at the scene of that accident.

When New York State Troopers arrived at the scene of the accident, Respondent was asked to submit to breathalyzer testing and he refused to do so. He was placed under arrest and transported to St. Luke's Hospital. At the hospital, Respondent was asked by Investigator Thomas Garcia of the New York State Police to provide a blood sample, on consent; Respondent

refused to do so. Investigator Garcia applied for, and was granted, a search warrant for a sample of Respondent's blood. The sample was taken at approximately 0400 hours on July 27, 2023.

The New York States Forensic Laboratory reported that their analysis of Respondent's blood sample showed a Blood Alcohol Content ("BAC") of 0.064%. Respondent does not dispute the chain of custody of his blood sample or the accuracy of the analysis of his blood.

Vehicle and Traffic Law Section 1192(1) prohibits the operation of a motor vehicle when the driver is impaired by the consumption of alcohol. Vehicle and Traffic Law Section 1195(2)(b) states: Evidence that there was more than .05 of one per centum but less than .07 of one per centum by weight of alcohol in such person's blood shall be prima facie evidence that such person was not in an intoxicated condition, but such evidence shall be relevant evidence, but shall not be given prima facie effect, in determining whether the ability of such person to operate a motor vehicle was impaired by the consumption of alcohol.

At approximately 0630 hours on July 27, 2023, a Duty Captain found Respondent fit for duty.

The following is a summary of the evidence presented at trial.

*Police Officer Anthony Polanco:*

Police Officer Anthony Polanco testified that on July 27, 2023, he was driving home northbound on Interstate 87 in a 2001 Toyota RAV-4 with a dash camera. He explained that the dash camera starts recording once the car is turned on and creates three-minute video recordings. He described the road as "dry and clear," and said there was not that much traffic. He noticed that a vehicle had gotten into an accident and initially assumed the driver must have hit a deer (T. 17-18). On cross-examination, he said nothing initially drew his attention to that vehicle, such as erratic driving, until he observed "sparks" underneath and to the right of that car (T. 31).

When he exited his vehicle and approached the other vehicle, he described the driver as a Caucasian male and the vehicle as dark. Polanco could not say for certain that the Caucasian male driver he approached was Respondent. He said the male appeared to be in shock and did not know what he hit. Polanco observed damage to the front and side passenger section of the vehicle (T. 23-24).

Polanco stated that shortly after he approached the driver of the vehicle, an older gentleman quickly approached the two of them and stated that his wife was riding with him on another motorcycle. Polanco testified he “immediately started running on the side of the road towards where the incident happened” (T. 25). He eventually observed a motorcycle lying on the grass, past the guardrail, and determined an accident might have happened (T. 25-26). He could not determine whether the motorcycle was damaged (T. 36). He immediately yelled out for someone to call 911. He eventually observed a body a few feet from the motorcycle, “right next to the guardrail, right underneath the guardrail, in between the ... small pillars to the guardrail” (T. 26). Officer Polanco saw there were injuries to the individual’s right leg, describing that he saw flesh on her right thigh, and she appeared to be bleeding from the head, but was unsure exactly where on the head since she had a helmet on (T. 27). He told the husband to stay with his wife, and he went to Respondent’s car to see if he had called 911. When he asked Respondent if he had called, he “got no reaction from him,” so he ran to his own vehicle to get his phone and call 911 himself (T. 27). He then returned to the body and began to perform CPR for several minutes until EMS arrived to take over.

Polanco spoke with the State Troopers who arrived. He did not see what was done with the body until he observed a white sheet placed over it, indicating to him that the person was deceased.

Department Exhibit 1 is a video recording from Polanco's dash camera. The following is a summary of the relevant portion of the video:

- 02:18-02:19: Polanco is driving in the right lane. There is a vehicle in the left lane closer to him and a vehicle in the right lane a distance away where you can only see the taillights.
- 02:19-02:23: The vehicle in the right lane appears to run over something. There are sparks underneath the vehicle and the right side of the vehicle appears to lift in the air. The vehicle then veers to the right shoulder of the road and crashes into the guardrails.
- 02:23-02:43: Polanco moves over into the left lane and passes the dark vehicle that is now against the guardrail. He moves back to the right lane and pulls over to the shoulder of the road.
- 02:44-02:50: Polanco moves the car up further before placing his vehicle in park and exiting.
- 02:50-02:59: There is a motorcycle stopped ahead of Polanco's vehicle on the right shoulder of the road.

Polanco explained in his testimony that when he initially pulled over on the road, he could not park right away as the vehicle behind him was still slowly driving forward, so he inched his car up further before parking (T. 21). He also explained that he later learned the man whose wife was hit parked his motorcycle ahead of him (T. 22).

*Investigator Thomas A. Garcia:*

Investigator Thomas Garcia has been employed with the New York State Police for over ten years. He was a uniformed trooper for five years until he was appointed as an investigator. He has been with the Bureau of Criminal Investigation since July 2018 (T. 42).

On July 27, 2023, he received a phone call while off-duty from a supervisor to respond to St. Luke's Hospital to interview Respondent and attempt to obtain a blood sample. He arrived at approximately 0100 hours, where he met State Trooper Mike Johnson and Respondent (T. 43-44). He was informed by Trooper Johnson that Respondent had an odor of alcohol on his breath. The first time he observed Respondent was around 0130 hours. Respondent did not want to discuss the details of the accident and was refusing a breathalyzer test. After reading Respondent

the warnings for refusal to take a chemical test, Investigator Garcia testified the next steps were to obtain an order to compel to get a blood sample from Respondent (T. 44-45). Investigator Garcia received the order from Judge Kim from Orange County Court at approximately 0400 hours, and the blood was drawn from Respondent at 0405 hours (T. 45-46). Respondent was cooperative with the hospital staff and did not resist the blood draw once the court order was received (T. 52).

Investigator Garcia explained he was in and out of Respondent's hospital room and he did observe that Respondent had an odor of alcohol and bloodshot eyes; however, he also stated that Respondent seemed lucid while speaking with him and did not have slurred speech (T. 47-48, 51). He brought the blood sample kit back to the station and made an appointment with New York State Police Mid-Hudson Regional Crime Lab for 1330 hours for testing (T. 48). Investigator Garcia received an email notification when the toxicology report was received, and it concluded that Respondent had a 0.064% BAC, indicating that legally he was driving with his ability impaired by alcohol (T. 49-50).

As of the date of this hearing, no charges have been filed by the Attorney General's office against Respondent in connection to this incident. Investigator Garcia testified that an autopsy had been performed, but the report has not been released to him yet, and the accident reconstruction report is incomplete at this time (T. 52-53).

*Dr. Cherry Alice Tsai:*

Dr. Tsai has been a forensic scientist in the toxicology section with the New York State Police Forensic Investigation Center for the past four-and-a-half-years. She received a doctorate in toxicology and a bachelor's of science in biology and chemistry from the University of Wisconsin-Madison. The parties stipulated to her being an expert in the area of toxicological analysis (T. 57-58).



She explained that when a person consumes alcohol, it is absorbed in the small intestine and into the blood stream, and then processed through the liver (T. 58-59). Once a person drinks, his or her blood alcohol concentration increases once it is absorbed into the blood stream, and then begins to decrease as the body starts to eliminate it (T. 60, 78-79). A multitude of factors can affect the rate of alcohol absorption and elimination, such as age, sex, weight, type of alcohol, medication, genetic factors, and chronic alcohol use (T. 79-80).

When testing a blood sample, the lab uses a method called Headspace GC-FID MS (T. 60). Dr. Tsai explained the instrument “will take a little piece of the sample, inject it into two columns, both columns will separate out individual components in the blood sample, and then it will identify the components and quantify it” (T. 61). Control samples are run using a series of samples of known concentrations, so the lab knows what it reads as and a calibration curve is established (T. 61). Per lab policy, each blood alcohol case is tested twice, and a reading from the first day and the second day is obtained and then averaged to report out as the blood alcohol level (T. 61-62, 66). Two tests are done to ensure analytical accuracy (T. 66). The final results on the toxicology report is the average of the two test results, and then the final average result has the last decimal place dropped (T. 66).

Dr. Tsai performed the ethanol identification and quantitation testing on Respondent’s blood sample (Dept. Ex. 2). The first test was done on August 7, 2023, producing a result of 0.0641% by weight. The second test was done on August 8, 2023, producing a result of 0.0639% by weight (T. 65-66). The reported final result on this sample was 0.064% by weight (T. 67). The reported margin of error in this was .004 (T. 72). Respondent’s blood sample was also tested for drugs, which were not detected (T. 74).

*Sergeant Michael Vega:*

Sergeant Vega works for NYPD IAB Group 12. He was assigned to Respondent's case on August 1, 2023. He testified he spoke with Investigator Garcia and the Attorney General's Office, and was provided the files they had (T. 82-84).

Respondent's Department interview was conducted on October 19, 2023. During his interview, he admitted that he had been drinking and eating at an event for about five hours (T. 92, 95). Respondent told investigators that it was a "tasting" event and he had about eight drinks, including bourbon, wine, and hard seltzer. He further admitted that he was involved in an accident on his way home, and that he refused the breathalyzer test (T. 92-93). Sergeant Vega stated that Respondent explained that the drinks were given in small cups about the size of a NyQuil dose cup<sup>1</sup> (T. 93). Respondent told them that he did not know what happened and believed he fell asleep while driving, only waking up when his car hit into the guardrail (T. 95).

*Respondent*

Respondent testified that he is a forty-one year old male who weighs approximately 220 pounds and is approximately 5'9" (T. 99). Respondent testified that on July 26, 2023, he had been up since around 0300 hours to drive a family member to the airport, and then went to work from 0600 hours to 1423 hours (T. 101-102). Respondent attended the event in New Rochelle with a group of friends after work at around 1830 hours (T. 116). The event had different vendors that provided samples of alcohol (T. 102-103). He also consumed a couple of empanadas, a taco, and a few slices of pizza (T. 104).

Respondent believed he drank about four bourbon drinks, two wine drinks, and about two hard seltzer drinks. He was unaware of the alcohol content of any of the drinks, but agreed on

---

<sup>1</sup> It was stipulated to by both parties that a NyQuil cup holds 1.5oz when full.

cross-examination that bourbon usually has a higher alcohol content (T. 112-114). Respondent stated he stopped drinking because the event ended at around 2200 hours (T. 116). A friend dropped him off to his car, a 2017 Chevy Malibu, and he began the drive home on Interstate 87. He testified that he felt competent to drive his car at that time, despite not sleeping at any point during the day since being up at 0300 hours and consuming alcohol (T. 101, 105).

Respondent stated that the “only thing [he] recalled of the incident was the impact of hitting the guardrail” (T. 105). On cross-examination, Respondent stated he did not remember when he fell asleep while driving, and that the impact of the car hitting the guardrail woke him up. (T. 124). He stated that an individual approached him and asked him if he was okay, which he said he was, just “in shock” because “I was startled awake. I didn’t know what happened” (T. 125). He initially testified that he did not recall Polanco saying that he may have hit a deer (T. 106). He stated that when he spoke with State Troopers, he told them he did not know what happened, admitted to drinking “a little,” and refused the breathalyzer test (T. 108). When Polanco yelled for someone to call 911, he ran back to his car to get his phone, but could not find it right away because it had dislodged from the car mount and was thrown into the back seat (T. 127).

When Respondent spoke with the State Troopers, he told them he thought he saw a deer and tried to avoid it (T. 128). He did not tell them at any point that he believed he fell asleep, mentioning that for the first time during his Department interview. On cross-examination, he testified that he “got the deer thing from the other individual” (T. 129). He conceded that upon reviewing the dash camera video, it was “apparent it might have hit some type of metal causing sparks” (T. 136). He did not see what might have been hit, and testified that he did not see any objects directly behind his vehicle, but further down he saw the guardrail and what appeared to

be a motorcycle (T. 136-37). He did not see a body, but was later told by Investigator Garcia there had been a fatality (T. 137).

Respondent offered Body-worn camera footage depicting him at the hospital at approximately 0358 hours, prior to having the blood sample drawn, where he testified that he recalled the conversation that was recorded (Resp. Ex. A at 00:00-01:35). He explained he felt conscious and fully aware of his surroundings at that time, was able to communicate clearly, was not slurring his speech, and was not unsteady on his feet (T. 109-110). Respondent testified he was found fit for duty by a Duty Captain at around 0630 hours (T. 144).

*Specification 1: Refusal to Submit to Breathalyzer*

I find that the Department Advocate has met his burden of proof by a preponderance of the credible, relevant evidence that Respondent refused to submit to breathalyzer testing on August 27, 2023.

Respondent admitted during his testimony that when a New York State trooper asked him whether he was willing to take a breathalyzer test at the scene of the accident, he refused to do so. This admission was corroborated by the credible testimony of New York State Police Investigator Garcia, who testified that Respondent refused to submit to breathalyzer testing at the scene, as well as refusing to consent to providing a blood sample at the hospital.

Based upon the foregoing, I find him Guilty of Specification 1.

*Specification 2: Driving While Impaired*

I find that the Department Advocate has met his burden of proof by a preponderance of the credible, relevant evidence that Respondent wrongfully operated a motor vehicle while his ability to do so was impaired by an intoxicant with a BAC of 0.64%.

The uncontroverted evidence is that Respondent had a BAC of 0.064 at the time of his blood draw at approximately 0400 hours on July 27, 2023. The Vehicle and Traffic Law established that an individual might be charged with impaired driving if their BAC is between 0.05 and 0.075. Respondent admitted during his trial testimony that he had eight “tastes” or samples of alcoholic beverages at the “Best of Westchester” festival during a three and one-half hour period from 1830 to 2200 hours. He admitted that the samples were served in plastic cups similar in size to a “NyQuil cup”<sup>2</sup>. The parties agreed that the cups could have held up to 1½ ounces, but that the cups were not filled to the brim. For the purposes of this analysis, the Tribunal will find that each of the samples averaged one ounce of liquid.

Respondent admitted that during the aforementioned three and one-half hour period, he had four samples of bourbon; two of red wine; and two of hard seltzer. He further admitted that he had been awake since 0300 hours that morning, worked a full tour of duty from approximately 0600-1430, and had no sleep during that period. Finally, Respondent conceded that although he consumed some empanadas, tacos and pizza at the festival, he did not have a “full meal.”

The totality of these circumstances, the results from the analysis of his blood, drawn four hours after he admitted at the scene that he had been drinking, plus falling asleep, are sufficient to establish impairment by a preponderance of the evidence.

Based upon the foregoing, I find Respondent Guilty of Specification 2.

*Specification 3: Wrongfully Causing the Death of an Individual*

I find that the Department Advocate has met his burden of proof by a preponderance of the credible, relevant evidence that Respondent wrongfully caused the death of a person by

---

<sup>2</sup> I take judicial notice that NyQuil’s cold and flu remedies are generally packaged with a plastic cup for dispensing the liquid.

operating a motor vehicle while his ability to do so was impaired by an intoxicant with a BAC of 0.64%.

The findings of fact contained in the analysis under Specification 2 are incorporated by reference in the analysis of this specification.

Police Officer Polanco's credible testimony established that he observed Respondent's vehicle as sparks appeared under the front of the vehicle and one side of the car appeared to lift off the highway. The most logical inference to be drawn from those observations is that Respondent's vehicle hit something metallic, causing the sparks, and that he ran over something with one of his wheels. Polanco candidly testified that he did not know what Respondent's vehicle might have struck, either at the point of contact or after he had pulled over his car and began speaking to Respondent. A cascading series of events, however, quickly established that Respondent had struck a female motorcyclist.

First, once stopped, a male motorcyclist immediately ran up to him and stated that his wife had been riding with him, clearly implying that his wife was no longer with him and he did not know where she was. This led Polanco to begin searching for a female along the side of the highway, moving toward the place where he had seen that the collision had occurred.

Second, Polanco discovered a motorcycle laying on the grass on the other side of the guardrail separating it from the highway. The logical inference to be drawn from this fact is that the motorcycle Polanco discovered was the motorcycle the male's wife had been riding, given its close temporal and physical proximity to the scene of the collision where her husband had stopped for help. It is more likely that not that the motorcycle came to be on the grass side of the guardrail through some overwhelming force, since the normal operation of a motorcycle would have taken place on the highway side of the barrier. Even if a motorcyclist pulled off the

highway to stop, and the motorcycle had somehow fallen over, their motorcycle would still be on the highway side. The Tribunal is unable to envision a scenario where a motorcyclist, because of the weight and size of a motorcycle, could intentionally hurdle the guardrail. It is more logical to infer that a superior force acted upon the motorcycle and caused it to flip over the guardrail.

Based on Polanco's observation of Respondent's vehicle appearing to strike something which caused sparks to appear under the vehicle, it is logical to infer that Respondent's vehicle struck the motorcycle from the rear, causing the sparks to fly and the motorcycle to flip over the guardrail.

Third, as Polanco continued to search for the motorcyclist's wife, he eventually discovered the body of a female laying on the side of the highway. This female appeared to have injuries to one of her legs and her head; she was also wearing a motorcycle helmet. Polanco testified that he found her body several feet from where he found the motorcycle. Based upon the male motorcyclist's assertion that his wife had been riding with him, the discovery nearby of a motorcycle which had hurdled the guardrail, and a helmeted, injured female on the side of the highway, the most logical inference to be drawn is that the woman discovered on the side of the highway was the male motorcyclist's wife. It is also logical to infer that she had been riding the motorcycle found in the grass until an intervening event caused it to become unstable, throwing her from the motorcycle.

Finally, the timing of the husband dismounting from his motorcycle, asking for help at the scene of an accident Polanco had just witnessed and the immediate discovery of a motorcycle and an injured female rider nearby establishes a critical nexus. Polanco's dash camera video shows light traffic along Interstate 87N and depicts no other vehicles in the area at the moment he observed the sparks under Respondent's car which could have been involved in the accident.

The most logical inference which can be drawn from this confluence of events is that the event which caused the female motorcyclist to lose control of her motorcycle and be thrown from it was Respondent's vehicle striking her.

I further find that Respondent wrongfully caused the female motorist's death while impaired.

In the view of the Tribunal, the totality of the credible, relevant evidence establishes that Respondent's decision to operate his vehicle after being awake for approximately 18 hours, having consumed approximately eight ounces of alcoholic beverages in a three and one-half hour period immediately before driving, and blood testing establishing a 0.064% BAC four hours after he admitted at the scene of the accident to drinking, was reckless and wrongful. Any motorist, let alone a Member of Service, should have appreciated the grave risk of harm operating a motor vehicle under those circumstances posed to themselves and other motorists.

Whiles Counsel for Respondent argued that there is no evidence that Respondent displayed the common-law indicia of intoxication, Investigator Garcia testified that he detected the scent of alcohol on Respondent's breath. Investigator Garcia also testified that Respondent had bloodshot eyes as he observed him in the hospital.

The Vehicle and Traffic Law prohibits impaired driving, even as it distinguishes it from intoxicated driving, which is treated more severely. The plain meaning of impaired driving is that the motorist's faculties are affected in such a way that it is not safe or prudent for them to drive. Respondent's claim that he fell asleep behind the wheel does not absolve him of responsibility. Such an occurrence, while the motorist is aware that they have been awake since 0300 hours the previous morning and consumed eight portions of alcohol within an hour of commencing their drive, is nonetheless reckless.



Based upon the totality of the evidence, and drawing the logical inferences therefrom, I find that Respondent was impaired at the time of the accident; that he struck the female motorcyclist's motorcycle and caused her to lose control of it; and that the female motorcyclist died as a result. While there is no direct evidence of the precise cause of the female motorist's death, whether from being thrown from the motorcycle or being run over by Respondent's vehicle, the evidence and the logical inferences drawn therefrom clearly establishes that it was the wrongful act of Respondent striking her motorcycle, which caused the cascading series of events that resulted in her death.

Based upon the foregoing, I find Respondent Guilty of Specification 3.

*Specification 4: Unfit for Duty*

I find that the Department Advocate has met his burden of proof by a preponderance of the credible, relevant evidence that Respondent was unfit for duty on July 27, 2023.

The findings of fact set forth in the analyses of Specifications 2 and 3 are incorporated by reference in the analysis of this specification.

It is undisputed that Respondent consumed eight samples of alcohol over a three and one-half hour period on July 26, 2023, between 1830-2200 hours. It is also undisputed that he woke up at approximately 0300 hours on July 26 and did not sleep between that time and the time of the accident, shortly after midnight. Finally, Investigator Garcia testified that while in the hospital, he smelled an odor of alcohol on Respondent's breath and observed Respondent had bloodshot eyes

Based upon the totality of the evidence, I find that Respondent was unfit for duty at the time of the accident on Interstate 87N. Any reasonably prudent individual who had not slept in 18 hours and, in addition, consumed eight samples of alcohol, should have questioned whether

they should embark upon an extended journey driving a car. In fact, in this case, this combination resulted in Respondent admitting that he had been drinking and further claimed that he had fallen asleep at the wheel.

Respondent's blood was drawn at approximately 0400 hours on July 27, 2023 and found to have a BAC of 0.064%. Based upon the combination of factors discussed above in Specification 2 and 3, the most logical inference to draw is that Respondent was unfit for duty at midnight. I further find that the Duty Captain's determination that Respondent was fit for duty at 0630 hours that morning was so remote in temporal proximity to the accident as to have minimal probative value.

Based upon the foregoing, I find Respondent Guilty of Specification 4.

*Good Order, Efficiency and Discipline*

I find that the Department Advocate has met his burden of proof by a preponderance of the credible, relevant evidence that Respondent committed the misconduct charged in Specifications 1-4 under circumstances which were prejudicial to the good order, efficiency and discipline of this Department.

The evidence demonstrates that Respondent refused to submit to breathalyzer testing at the scene of a vehicular accident where he admitted to the State Trooper that he had been drinking. Respondent later refused to consent to providing a blood sample at the hospital after being informed that there had been a fatality resulting from the accident in which his vehicle was involved. While it is true that a citizen would have had the right to refuse the breathalyzer testing, such refusal carries a collateral consequence of license suspension. In addition, Respondent is not just a citizen, he is a sworn Member of Service who is held to a higher standard.

Respondent committed this most egregious misconduct the moment he chose to get behind the wheel of his car after an evening of drinking and little sleep. In so doing, he placed his short-term personal interests ahead of the interests of society and this Department. This inexcusable bad judgement resulted in a loss of life which was preventable. In the view of this Tribunal, these circumstances would reasonably have the tendency to erode the public's confidence in the ability of this Department to carry out its crime-fighting and public safety functions.

### PENALTY

In order to determine an appropriate penalty, this Tribunal, guided by the Department's Disciplinary System Penalty Guidelines, considered all relevant facts and circumstances, including potential aggravating and mitigating factors established in the record. Respondent's employment history also was examined. *See* 38 RCNY § 15-07. Information from his personnel record that was considered in making this penalty recommendation is contained in an attached memorandum.

Respondent, who was appointed to the Department on January 7, 2008, has been found guilty of refusing to submit to a breathalyzer, driving while impaired, causing the death of another while driving impaired and being unfit for duty.

The Department has recommended termination; I concur with their recommendation.

The presumptive penalty for refusing to submit to a breathalyzer or other appropriate test is 30 suspension days and dismissal probation. The mitigated penalty is 15 penalty days and the aggravated penalty is termination.

The presumptive penalty for driving while impaired is 30 suspension days, 20 penalty days, dismissal probation, counseling and ordered breath testing. There is no mitigated penalty; the aggravated penalty is termination.

The presumptive penalty for driving while impaired which involves death of another person is termination; the mitigated penalty is forced separation.

The presumptive penalty for being unfit for duty is 30 penalty days, dismissal probation, counseling and ordered breath testing. There is no mitigated penalty; the aggravated penalty is termination.

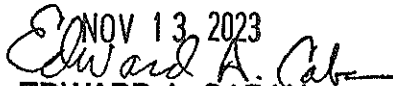
The tragic circumstances of this case do not allow for equivocation. Respondent, whose evaluations describe as an exceptional performer, made an error in judgement which resulted in the loss of an individual's life. It is terrible irony that the preservation of life is a core value of this Department. Based upon this record, the only penalty consistent with good order and discipline is termination.

Respectfully submitted,

  
Paul M. Gamble, Sr.

Assistant Deputy Commissioner Trials

**APPROVED**

NOV 13 2023  
  
EDWARD A. CABAN  
POLICE COMMISSIONER



## POLICE DEPARTMENT CITY OF NEW YORK

From: Assistant Deputy Commissioner – Trials

To: Police Commissioner

Subject: SUMMARY OF EMPLOYMENT RECORD  
POLICE OFFICER KEVIN RICHMOND  
TAX REGISTRY NO. 946161  
DISCIPLINARY CASE NO. 2023-28864

Respondent was appointed to the Department on July 1, 2003. On his three most recent annual performance evaluations, he was rated “Exceptional” in 2020, 2021 and 2022.

Respondent has no disciplinary history. In connection with the instant matter, he was suspended without pay from July 27, 2023 to August 28, 2023.

For your consideration.

Paul M. Gamble, Sr.  
Assistant Deputy Commissioner Trials